

ESTTA Tracking number: **ESTTA672021**

Filing date: **05/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	AVA RUHA CORPORATION DBA MOTHER'S MARKET & KITCHEN
Granted to Date of previous extension	05/13/2015
Address	100 KALMUS DRIVE COSTA MESA, CA 92626 UNITED STATES
Correspondence information	Kit M. Stetina Stetina Brunda Garred & Brucker 75 Enterprise, Suite 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com

### Applicant Information

Application No	86366231	Publication date	01/13/2015
Opposition Filing Date	05/13/2015	Opposition Period Ends	05/13/2015
Applicant	Nathan, Alan 1301 N. Harper Ave., Unit F Los Angeles, CA 90046 UNITED STATES		

### Goods/Services Affected by Opposition


Class 043. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Bar services; Restaurant services

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1440871	Application Date	03/26/1984
Registration Date	05/26/1987	Foreign Priority Date	NONE
Word Mark	MOTHER'S MARKET & KITCHEN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1978/05/01 First Use In Commerce: 1978/05/01 RESTAURANT AND GROCERY SERVICES DIRECTED TOWARD NATURAL AND HEALTH PRODUCTS AND FOOD PREPARATIONS

U.S. Registration No.	4351038	Application Date	01/11/2012
Registration Date	06/11/2013	Foreign Priority Date	NONE
Word Mark	MOTHER'S MARKET & KITCHEN		
Design Mark	MOTHER'S MARKET & KITCHEN		
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1978/09/19 First Use In Commerce: 1978/09/19 RETAIL GROCERY STORE SERVICES FEATURING HEALTH FOOD PRODUCTS</p> <p>Class 043. First use: First Use: 1978/09/19 First Use In Commerce: 1978/09/19 RESTAURANT SERVICES FEATURING NATURAL AND HEALTHY FOOD PREPARATIONS, NAMELY, VEGETARIAN, GLUTEN-FREE, ORGANIC, VEGAN, LOW-CARBOHYDRATE, LOW SALT, RAW, DAIRY-FREE, POULTRY, FISH, AND LOW GLYCEMIC FOODS AND BEVERAGES</p>		

U.S. Registration No.	4668030	Application Date	10/04/2012
Registration Date	01/06/2015	Foreign Priority Date	NONE
Word Mark	MOTHER'S KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2010/06/30 First Use In Commerce: 2010/06/30 RETAIL GROCERY STORE SERVICES FEATURING HEALTH FOOD PRODUCTS</p> <p>Class 043. First use: First Use: 2014/11/06 First Use In Commerce: 2014/11/06 RESTAURANT SERVICES FEATURING NATURAL AND HEALTHY FOOD PREPARATIONS, NAMELY, VEGETARIAN, GLUTEN-FREE, ORGANIC, VEGAN, LOW-CARBOHYDRATE, LOW SALT, RAW, DAIRY-FREE, POULTRY, FISH, AND LOW GLYCEMIC FOODS AND BEVERAGES</p>		

U.S. Registration No.	4712868	Application Date	10/04/2012
Registration Date	03/31/2015	Foreign Priority Date	NONE
Word Mark	MOTHER'S MARKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 1978/09/30 First Use In Commerce: 2015/01/21 RETAIL GROCERY STORE SERVICES FEATURING HEALTH FOOD PRODUCTS</p> <p>Class 043. First use: First Use: 1978/09/30 First Use In Commerce: 2014/11/16 RESTAURANT SERVICES FEATURING NATURAL AND HEALTHY FOOD PREPARATIONS, NAMELY, VEGETARIAN, GLUTEN-FREE, ORGANIC, VEGAN, LOW-CARBOHYDRATE, LOW SALT, RAW, DAIRY-FREE, POULTRY, FISH, AND LOW GLYCEMIC FOODS AND BEVERAGES</p>		

Attachments	73472414#TMSN.png( bytes ) 85513791#TMSN.png( bytes ) 85745711#TMSN.png( bytes ) 85745733#TMSN.png( bytes ) [05 13 15] NoticeOfOpposition.pdf(307494 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kit M. Stetina/
Name	Kit M. Stetina
Date	05/13/2015

Case: AVARU-016M

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Application Serial No. 86/366,231**

Ava Ruha Corporation dba Mother's	)	Opposition No.:
Market & Kitchen,	)	
	)	
Opposer	)	
	)	
vs.	)	
	)	
Alan Nathan,	)	
	)	
Applicant	)	
	)	

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**NOTICE OF OPPOSITION**

In the matter of the application of Alan Nathan, of Los Angeles, California (hereinafter "Applicant") for registration of the mark MOTHER'S AUXILIARY, Application Serial No. 86/366,231 published in the Official Gazette on January 13, 2015 at TM 4397, Ava Ruha Corporation dba Mother's Market & Kitchen, a California corporation, with offices at 100 Kalmus Drive, Costa Mesa, California 92626 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 86/366,231, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive development, advertising, and marketing of restaurant and grocery services directed toward natural and health products and food preparations and goods related thereto. In connection therewith, Opposer has used, or filed federal applications with an intent to

use, in interstate commerce, the service mark MOTHER'S MARKET & KITCHEN for the aforementioned goods since prior to Applicant's filing date of the application of Serial No. 86/366,231 for the mark MOTHER'S AUXILIARY.

2. Since at least as early as 1978, Opposer has made use of its MOTHER'S MARKET & KITCHEN service mark in commerce. Since adoption of its MOTHER'S MARKET & KITCHEN service mark, Opposer has continuously used such mark in commerce.

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its retail restaurant and grocery services, and has created valuable goodwill among the purchasing public under its MOTHER'S MARKET & KITCHEN service mark.

4. As a result of the continuous and extensive use of the MOTHER'S MARKET & KITCHEN service mark by Opposer, this mark has become and continues to function as a valuable business and marketing asset of Opposer, and serve to indicate to the trade and consuming public the retail restaurant and grocery services originating from Opposer and its authorized representative.

5. Opposer has obtained United States Trademark Registration No. 1,440,871, registered May 26, 1987, for the mark MOTHER'S MARKET & KITCHEN for the services set forth in that registration. Opposer's mark is incontestable. A copy of that registration is attached hereto as **Exhibit 1**.

6. Opposer has obtained United States Trademark Registration No. 4,351,038, registered June 11, 2013, for the mark MOTHER'S MARKET & KITCHEN

for the services set forth in that registration. A copy of that registration is attached hereto as **Exhibit 2.**

7. Opposer has obtained United States Trademark Registration No. 4,668,030, registered January 6, 2015, for the mark MOTHER'S KITCHEN for the services set forth in that registration. A copy of that registration is attached hereto as **Exhibit 3.**

8. Opposer has obtained United States Trademark Registration' No. 4,712,868, registered March 31, 2015, for the mark MOTHER'S MARKET for the services set forth in that registration. A copy of that registration is attached hereto as **Exhibit 4.**

9. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a Request to Extend Time for Filing this Notice of Opposition against Application Serial No. 86/366,231 to May 13, 2015. A copy of said Request to Extend Time is attached hereto as **Exhibit 5.**

10. Notwithstanding Opposer's rights in and to said MOTHER'S MARKET & KITCHEN service mark, on August 14, 2014 Applicant, on information and belief, filed an application for registration of the mark MOTHER'S AUXILIARY in International Class 043, for bar and restaurant services. Said application was published for opposition in the Official Gazette on January 13, 2015 at TM 4397.

11. Applicant's MOTHER'S AUXILIARY mark is confusingly similar to Opposer's MOTHER'S MARKET & KITCHEN service mark and its registration and use by Applicant on the goods claimed in the subject application is likely to cause confusion, deception and mistake.

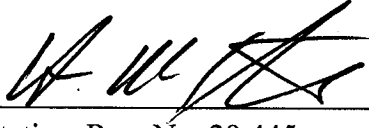
12. Applicant's use of its MOTHER'S AUXILIARY mark interferes with Opposer's use of its MOTHER'S MARKET & KITCHEN service mark and dilutes the strength of Opposer's trademark and use of, or registration of Applicant's mark in by Applicant will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of Application Serial No. 86/366,231 to Applicant be denied.

Opposer authorizes the filing fee for this Opposition in the amount of \$300 (one international class) to be charged to Opposer's Deposit Account.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: 5/13/15 By:   
Kit M. Stetina, Reg. No. 29,445  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246

Counsel for Opposer  
Ava Ruha Corporation dba Mother's Market &  
Kitchen



# Exhibit 1

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 1,440,871  
Registered May 26, 1987

SERVICE MARK  
PRINCIPAL REGISTER



AVA RUHA CORPORATION (CALIFORNIA  
CORPORATION), DBA MOTHER'S MARKET  
AND KITCHEN  
225 EAST 17TH STREET  
COSTA MESA, CA 92627

FIRST USE 5-1-1978; IN COMMERCE  
5-1-1978.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "MARKET & KITCHEN",  
APART FROM THE MARK AS SHOWN.

FOR: RESTAURANT AND GROCERY SERV-  
ICES DIRECTED TOWARD NATURAL AND  
HEALTH PRODUCTS AND FOOD PREPARA-  
TIONS, IN CLASS 42 (U.S. CLS. 100 AND 101).

SER. NO. 472,414, FILED 3-26-1984.

MARTIN MARKS, EXAMINING ATTORNEY

# Exhibit 2

# United States of America

United States Patent and Trademark Office

## MOTHER'S MARKET & KITCHEN

**Reg. No. 4,351,038**

**Registered June 11, 2013**

**Int. Cls.: 35 and 43**

**SERVICE MARK**

**PRINCIPAL REGISTER**

AVA RUHA CORPORATION (CALIFORNIA CORPORATION), DBA MOTHER'S MARKET & KITCHEN,  
100 KALMUS DRIVE  
COSTA MESA, CA 92626

FOR: RETAIL GROCERY STORE SERVICES FEATURING HEALTH FOOD PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-19-1978; IN COMMERCE 9-19-1978.

FOR: RESTAURANT SERVICES FEATURING NATURAL AND HEALTHY FOOD PREPARATIONS, NAMELY, VEGETARIAN, GLUTEN-FREE, ORGANIC, VEGAN, LOW-CARBOHYDRATE, LOW SALT, RAW, DAIRY-FREE, POULTRY, FISH, AND LOW GLYCEMIC FOODS AND BEVERAGES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-19-1978; IN COMMERCE 9-19-1978.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 1,440,871.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MARKET & KITCHEN", APART FROM THE MARK AS SHOWN.

SN 85-513,791, FILED 1-11-2012.

RONALD DELGIZZI, EXAMINING ATTORNEY



*Kevin Street*  
Acting Director of the United States Patent and Trademark Office

# Exhibit 3

# United States of America

United States Patent and Trademark Office

## MOTHER'S KITCHEN

**Reg. No. 4,668,030**

**Registered Jan. 6, 2015**

**Int. Cls.: 35 and 43**

**SERVICE MARK**

**PRINCIPAL REGISTER**

AVA RUHA CORPORATION (CALIFORNIA CORPORATION), DBA MOTHER'S MARKET  
& KITCHEN,  
100 KALMUS DRIVE  
COSTA MESA, CA 92626

FOR: RETAIL GROCERY STORE SERVICES FEATURING HEALTH FOOD PRODUCTS, IN  
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-30-2010; IN COMMERCE 6-30-2010.

FOR: RESTAURANT SERVICES FEATURING NATURAL AND HEALTHY FOOD PREPAR-  
ATIONS, NAMELY, VEGETARIAN, GLUTEN-FREE, ORGANIC, VEGAN, LOW-CARBO-  
HYDRATE, LOW SALT, RAW, DAIRY-FREE, POULTRY, FISH, AND LOW GLYCEMIC  
FOODS AND BEVERAGES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 11-6-2014; IN COMMERCE 11-6-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 1,440,871.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KITCHEN", APART FROM  
THE MARK AS SHOWN.

SN 85-745,711, FILED 10-4-2012.

JESSICA A. POWERS, EXAMINING ATTORNEY



*Nichelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office

# Exhibit 4

# United States of America

United States Patent and Trademark Office

## MOTHER'S MARKET

**Reg. No. 4,712,868**

**Registered Mar. 31, 2015**

**Int. Cls.: 35 and 43**

**SERVICE MARK**

**PRINCIPAL REGISTER**

AVA RUHA CORPORATION (CALIFORNIA CORPORATION), DBA MOTHER'S MARKET  
& KITCHEN,  
100 KALMUS DRIVE  
COSTA MESA, CA 92626

FOR: RETAIL GROCERY STORE SERVICES FEATURING HEALTH FOOD PRODUCTS, IN  
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-30-1978; IN COMMERCE 1-21-2015.

FOR: RESTAURANT SERVICES FEATURING NATURAL AND HEALTHY FOOD PREPAR-  
ATIONS, NAMELY, VEGETARIAN, GLUTEN-FREE, ORGANIC, VEGAN, LOW-CARBO-  
HYDRATE, LOW SALT, RAW, DAIRY-FREE, POULTRY, FISH, AND LOW GLYCEMIC  
FOODS AND BEVERAGES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-30-1978; IN COMMERCE 11-16-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 1,440,871.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MARKET", APART FROM THE  
MARK AS SHOWN.

SN 85-745,733, FILED 10-4-2012.

JESSICA A. POWERS, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office



# Exhibit 5

ESTTA Tracking number: **ESTTA650319**

Filing date: **01/15/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: **Nathan, Alan**  
Application Serial Number: **86366231**  
Application Filing Date: **08/14/2014**  
Mark: **MOTHER'S AUXILIARY**  
Date of Publication: **01/13/2015**

**First 90 Day Request for Extension of Time to Oppose for Good Cause**

Pursuant to 37 C.F.R. Section 2.102, AVA RUHA CORPORATION DBA MOTHER'S MARKET & KITCHEN, 100 KALMUS DRIVE, COSTA MESA, CA 92626, UNITED STATES, a corporation organized under the laws of CALIFORNIA, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 02/12/2015. AVA RUHA CORPORATION DBA MOTHER'S MARKET & KITCHEN respectfully requests that the time period within which to file an opposition be extended until 05/13/2015.

Respectfully submitted,

/kms/

01/15/2015

**KIT M. STETINA**

**STETINA BRUNDA GARRED & BRUCKER**

**75 ENTERPRISE, SUITE 250**

**ALISO VIEJO, CA 92656**

**UNITED STATES**

**RLAU@STETINALAW.COM**

**949-855-1246**

**PROOF OF SERVICE**

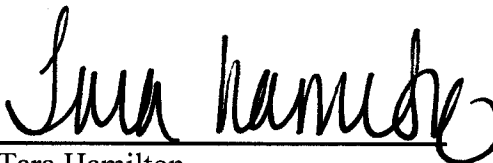
State of California     )  
                                      ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **May 13, 2015**, the attached **NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Alan Nathan  
1301 N. Harper Ave. Unit F  
Los Angeles, CA 90046

Kamran Fattahi  
LAW OFFICES OF KAMRAN FATTAHI  
15303 Ventura Blvd., Ste. 900  
Sherman Oaks, CA 91403-3199

Executed on **May 13, 2015** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Tara Hamilton